



U.S. Department of Justice
Immigration and Naturalization Service

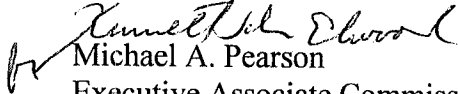
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Office of the Executive Associate Commissioner

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MEMORANDUM FOR ALL REGIONAL DIRECTORS
DIRECTOR, INTERNATIONAL AFFAIRS
FLETC/GLYNCO

FROM: 
Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Guidance on Processing Petitions for Adopted Alien Children Less Than 18 Years of Age Considered a "Child" Under the Immigration and Nationality Act through Public Law 106-139

This memorandum provides clarification regarding recent action by Congress: Public Law 106-139, signed by the President on December 7, 1999. The law amends the age of an alien "adopted child" or "orphan" as defined in the Immigration and Nationality Act (Act) from sixteen years old to eighteen years old in cases where the child's sibling, who is under sixteen, is petitioned by the same U.S. citizen(s). This memorandum updates the December 28, 1999, policy guidance on the subject.

Expansion of the Definition of "Child"

Before the amendment, section 101(b)(1)(E) of the Act defined a "child" as including, "a child adopted while under the age of sixteen years if the child has been in the legal custody of and has resided with, the adopting parent or parents for at least two years...." Section 101(b)(1)(F) further provides that the definition of "child" includes a "child under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing proper care and has in writing irrevocably released the child for emigration and adoption."

Public Law 106-139 adds new paragraphs to both section 101(b)(1)(E) and section 101(b)(1)(F). The original paragraphs are designated section 101(b)(1)(E)(i) and section 101(b)(1)(F)(i), respectively. The new paragraphs, relating to older siblings, are section 101(b)(1)(E) (ii) and section 101(b)(1)(F)(ii).

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Public Law 106-139 amends section 101(b)(1)(E) of the Act by adding a second paragraph which includes within the definition of "child," "a child who (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of eighteen years."

Public Law 106-139 amends section 101(b)(1)(F) of the Act to add a second paragraph which includes within the definition of "child," "a child who (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of eighteen at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b)."

The effect of these changes is to amend the Act to provide that an adopted alien child who is under the age of eighteen may be considered a "child" as defined in the Act, if the child is adopted with or after a sibling who is a "child" as defined under section 101(b)(1)(E)(i) or under section 101(b)(1)(F)(i) of the Act. The first sibling adopted must be under the age of sixteen, but the second sibling need only be under the age of eighteen.

This change in law is only applicable when the sibling has been or will be adopted by the same adoptive parent(s) or prospective adoptive parent(s). The child must otherwise fall under the definition of a child under section 101(b)(1)(E) or section 101(b)(1)(F) of the Act. The term "natural siblings" is not defined in the Public Law. We interpret that term to include children sharing one or both biological parents. The exceptions relating to the sibling of an adopted alien child apply whether the already adopted sibling has been adopted through the two-year physical and legal custody requirements of section 101(b)(1)(E), or as an orphan under section 101(b)(1)(F) of the Act. In the case of an I-130 (Petition for Alien Relative) based on section 101(b)(1)(E) the adoption must take place before the child's eighteenth birthday. In the case of an I-600 (Petition to Classify Orphan as an Immediate Relative) based on section 101(b)(1)(F), the petition must be filed prior to the child's eighteenth birthday.

Review of Application for Adoption of Older Sibling

Discussed below are two situations applicable to the new law.

- A. The INS has approved an adopted parent or parents for adoption of an orphan in Rongovia. After traveling to Rongovia and adopting their child, the family learns their newly adopted child has an older sibling (over sixteen but under eighteen years of age), and the family wants to adopt the sibling.

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The parent(s) must comply with the following:

- 1) If the original home study stated the family was approved to adopt more than one child and specifically approved for adoption of an older child, the home study does not need to be amended. If the original home study did not state that the family was approved to adopt more than one child and specifically approved for adoption of an older child, the home study must be amended to reflect the family is approved to adopt an additional older child. If the original home study has expired, a new home study must be submitted.
 - 2) The adoptive parent or petitioner must be able to show through documentation that the older sibling is, in fact, the sibling of the initially adopted child in their family. To prove the older sibling meets the definition under the Act, the INS may require the adoptive parent or petitioner to provide birth certificates, adoption decrees from the foreign court, death certificates, marriage certificates, and other official documentation to prove the children are siblings. The INS may suggest DNA testing of the siblings if there are any questions regarding the sibling relationship. All expenses incurred to prove relationship must be borne by the family.
 - 3) The I-600A (Application for Advanced Processing of Orphan Petition) must also reflect that the parent(s) plan to adopt more than one child. If the I-600A does not reflect that the parent(s) plan to adopt more than one child an amended I-600A may be submitted with no additional fee. Alternatively, and particularly when the parent(s) are overseas when they locate the sibling, they may file an I-600 at the overseas INS office or consular post with the required supplementary documentation. The adoptive parent(s) are responsible for all additional fees.
 - 4) The adoptions may occur simultaneously, but in no circumstance may a child qualify as a "child" under section (101)(b)(1)(E)(ii) or section (101)(b)(1)(F)(ii) of the Act before the younger sibling qualifies as a "child" under section (101)(b)(1)(E)(i) or section (101)(b)(1)(F)(i).
- B.** In the second situation a family learns of the existence of an older sibling after their adopted child has lived with them for several years.

The parent(s) must comply with the following:

1. The adoptive parent or petitioner must initiate adoption or immigration proceedings from the beginning. A completed I-600, including a new home study and all supporting documentation must be filed before the child turns eighteen.

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2. The adoptive parent or petitioner must be able to show through documentation that the older sibling is, in fact, the sibling of the adopted child in their family. To prove the older sibling meets the definition under the Act, the INS may require the adoptive parent or petitioner to provide adoption decrees of both adopted children, birth certificates, adoption decrees from the foreign court, death certificates, marriage certificates, and other official documentation to prove the children are siblings. The INS may suggest DNA testing of the siblings if there are any questions regarding the sibling relationship. All expenses incurred to prove relationship must be borne by the family.
3. In most cases the older sibling must also meet the definition of "orphan" as defined in the Act. However, there may be situations where the older child is not an "orphan" but is eligible under section 101(b)(1)(E)(ii) of the Act because the child has been in the legal custody of the parent(s) and has resided with them for two years.

Changes Relating to Naturalization

Public Law 106-139 also changed section 101(c)(1) of the Act causing the meaning of the word "child" to be changed in every instance where the word "child" appears in Title III of the Act so that it includes the definition in section 101(b)(1)(E)(ii) and (F)(ii) of the Act. Therefore, the meaning of "adopted child" is changed in sections 320 and 321. The meaning of a "child" changes in the same way in section 322(a)(4). The meaning of "child" also changes in section 337 to the extent it refers to section 322(a)(4).

For additional information, please contact Michael Biggs in the Headquarters Office of Adjudications at 202-514-4754.

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